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RECENT DECISIONS

COMMERCE—MIGRATORY BIRDS.—Migratory birds were declared to be under the protection of the federal government by an act of Congress. The act authorized the Department of Agriculture to make regulations for their protection. The defendant was indicted for violation of one of the regulations. *Held*, the act is unconstitutional. *U. S. v. Shauver*, 214 Fed. 154.

It is a well-established rule of law in the American courts that game is the property of the States in their sovereign capacity as the representatives of the people and is held for the benefit of all in common. *Geer v. Connecticut*, 161 U. S. 519. Migratory birds repeatedly pass from the jurisdiction of one State to that of another. As each State may enact such game laws as it may deem proper these laws are not likely to be uniform throughout the various States, and it seems clear that migratory game can only be preserved by national legislation. But the statute in the principal case has exceeded the powers of Congress, as there is no provision in the Constitution either expressly or impliedly giving Congress power to protect game. The most tenable ground for upholding this act is that it is authorized by the commerce clause of the Constitution. But obviously, the subject matter of commerce must be capable of human control. Thus, it has been held that the floating of logs upon the surface of a stream, uncontrolled in their movement, is not commerce. *Harrigan v. Conn. R. L. Co.*, 129 Mass. 580, 37 Am. Rep. 387. *A fortiori*, the movements of migratory birds which are in no wise effected by human agency is not commerce. Nor can the act be upheld on the ground that it is an exercise of police power by the federal government for the United States possesses no police power as to property belonging to a State. *Patterson v. Kentucky*, 97 U. S. 501. It seems clear that the purpose of this statute is wise, but it can be obtained only by constitutional amendment.

COMMON CARRIERS—AGENTS—EFFECT OF MISREPRESENTATION OF LAW.—A ticket agent sold to the plaintiff a mileage book, representing that it would be good between certain points. The representation was false and the plaintiff suffered thereby. *Held*, the railroad is liable. *Driggs v. Southern R. Co.* (S. C.), 81 S. E. 431.

By the overwhelming weight of authority, a passenger has the right to rely upon the representations of a ticket agent as to the effect of the ticket sold, and the carrier is liable for any misrepresentation resulting in damage to the passenger. *Smith v. Southern R. Co.*, 88 S. C. 421, 70 S. E. 1057, 34 L. R. A. (N. S.) 708; *Hayes v. Wabash, etc., Ry. Co.*, 163 Mich. 174, 128 N. W. 217, 31 L. R. A. (N. S.) 229. It has been suggested that as the tariff under which mileage is sold is filed with the Interstate Commerce Commission, it becomes a matter of law and there can be no misrepresentation in regard to it, based on the as-

sumption that "everyone is supposed to know the law." See *Aldrich v. R. R. Co.*, 95 S. C. 427, 79 S. E. 316; *Kansas C. S. R. Co. v. Carl*, 227 U. S. 639. The maxim *ignorantia legis neminem excusat*, while often incorrectly expressed, is usually rightly applied. *Chicago, etc., R. Co. v. Kirby*, 225 U. S. 155. Though ignorance of the law excuses no one, everyone is not supposed to know the law. There is no such rule in law or equity. *Ryan v. State*, 104 Ga. 78, 30 S. E. 678; *Black v. Ward*, 27 Mich. 191, 15 Am. St. Rep. 162. It may be true that there is a prima facie presumption that everyone knows the law but this fails upon proof of positive misrepresentation relied on in good faith. *O'Neil v. Lake Superior, etc., Co.*, 63 Mich. 690, 30 N. W. 688.

CONSTITUTIONAL LAW—INTERSTATE COMMERCE—EFFECT OF STATE ANTI-TRUST LAWS.—The plaintiff in one State sold certain goods to the defendant in another, under a contract fixing the retail price of the goods, prohibiting the vendor from selling any other goods, and restricting sales to one county. In defense to an action to recover the purchase price of the goods, the vendee claimed the contract to be invalid under the State anti-trust laws. *Held*, the transaction is not affected by State anti-trust laws, since it involves interstate commerce. *Watkins Medical Co. v. Holloway* (Mo.), 168 S. W. 290.

It is well settled that contracts of sale only, in restraint of trade, between parties of different States, involve interstate commerce and are not affected by State anti-trust laws. *Hadley Dean Plate Glass Co. v. Highland Glass Co.* (C. C. A.), 143 Fed. 242; *Westmoreland Specialty Co. v. Missouri Glass Co.*, 169 Mo. App. 368, 152 S. W. 387. But, by the better view, where a contract involving interstate commerce, affects the subject-matter of the transaction when it has lost its character as interstate commerce, the contract is subject to State laws. *Watkins Medical Co. v. Johnson* (Tex.), 162 S. W. 394; *Fuqua v. Pabst Brewing Co.*, 90 Tex. 298, 38 S. W. 29, 35 L. R. A. 241. Thus where a combination was seeking to control both interstate and intrastate markets as to its products, the intrastate monopoly was declared subject to the State laws, though the products in question were shipped into the State from without. *Standard Oil Co. of Kentucky v. State* (Miss.), 65 South. 468. And in this connection, goods the subject of interstate commerce, become subject to State regulation in the hands of the original importer, when offered for sale by him in broken packages or by retail. *Fuqua v. Pabst Brewing Co.*, *supra*; *Leisy v. Hardin*, 135 U. S. 100.

CONSTITUTIONAL LAW—POLICE POWER—MEDICINE AND SURGERY.—A state statute authorized the State Board of Medical Examiners to revoke the license of any physician who should publish any advertisement relative to diseases of the sexual organs. *Held*, the statute is in violation of the Fourteenth Amendment to the Constitution. *Chenoweth v. State Board of Medical Examiners* (Col.), 141 Pac. 132. See NOTES, p. 150.

DAMAGES—PHYSICAL EXAMINATION—POWER TO ENFORCE.—The plaintiff was injured while on defendant's train. The defendant made applica-